

SERVED: March 20, 2007

NTSB Order No. EA-5273

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 16<sup>th</sup> day of March, 2007

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-17393
v.	)	
	)	
JOHNNY H. BENNETT,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING RECONSIDERATION**  
**AND PARTIALLY DENYING REQUEST FOR STAY**

Upon consideration of respondent's petition for reconsideration of NTSB Order No. EA-5258 (served November 9, 2006) and the Administrator's response in opposition, we conclude that the petition, which in many respects simply reiterates arguments previously considered, neither establishes error in our original decision nor otherwise presents a basis for modifying it.

Respondent also appears to argue, in the alternative, for a stay pending his appeal to the United States Court of Appeals for the Ninth Circuit of NTSB Order No. EA-5258. Our order was automatically stayed while we considered respondent's petition for reconsideration. The Board's policy with respect to stays of orders pending judicial appeals is:

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We generally grant a stay when a suspension of less than six months [180 days] is affirmed, and consistently deny stays in cases involving certificate revocation because revocation incorporates a conclusion that an airman lacks the qualifications required of a certificate holder. Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations.

Administrator v. Todd, NTSB Order No. EA-4399 (1995). Our order affirmed revocation of respondent's medical certificate, a 90-day suspension of respondent's Airline Transport Pilot (ATP) certificate, and a 60-day suspension of all other airman certificates held by respondent. Applying the standards we articulated in Todd, and in the absence of any contrary argument from the Administrator, we grant respondent's request for stay as to the suspension of his ATP and other certificates, and deny a stay as to the revocation of respondent's medical certificate.<sup>1</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's request for reconsideration is denied;
2. Respondent's motion for stay of NTSB Order No. EA-5258 is, with regard to the revocation of respondent's medical certificate, denied<sup>2</sup>; and
3. The effective date of NTSB Order No. EA-5258 is, with regard to the Administrator's suspension of respondent's ATP and other airman certificates, stayed until the expiration of the

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<sup>1</sup> Strict application of our long-standing practice of granting stays in circumstances involving suspensions for less than 180 days, but not in cases of revocation, creates a paradoxical outcome in this case. Because of the range of sanctions imposed on respondent, across different certificates, our adherence to precedent results in respondent's retention of pilot certifications but a loss in the ability to utilize them. We are cognizant that the practical result of our refusal to stay the revocation of respondent's medical certificate will be that respondent likely cannot exercise the privileges of his airman certificates, suspension of which have technically been stayed. This outcome is consistent with the precedent of this Board.

<sup>2</sup> Respondent must physically surrender his medical certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 67.415.

60-day period within which a petition for review may be filed with the Court of Appeals; however, if such a petition is filed, the stay will continue in effect with regard to respondent's ATP and airman certificates until the court enters judgment on the petition.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above order.